

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH L. TRAVIS,	§
	§
Defendant Below-	§ No. 723, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 30109075DI
Plaintiff Below-	§
Appellee.	§

Submitted: May 14, 2010

Decided: July 21, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 21<sup>st</sup> day of July 2010, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Joseph Travis, filed this appeal from the Superior Court's denial of his third motion for postconviction relief. After review, we reject the Superior Court's conclusion that this Court's decision in *Allen v. State*<sup>1</sup> asserted a new rule that is retroactively applicable. Nonetheless, we affirm the Superior Court's judgment denying Travis' motion for postconviction relief because we conclude that all of his claims are procedurally barred.

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<sup>1</sup> 970 A.2d 203 (Del. 2009).

(2) The record reflects that, in 1992, a Superior Court jury convicted Travis and his codefendant, Lester Anderson, of first degree murder. This Court affirmed Travis' conviction and life sentence on direct appeal.<sup>2</sup> In 1997, Travis filed his first motion for postconviction relief, contending that newly discovered evidence mandated a new trial. The Superior Court denied his motion, and this Court affirmed on appeal.<sup>3</sup> Travis filed his second motion for postconviction relief in 2007, which the Superior Court denied.<sup>4</sup> His appeal from that decision was dismissed as untimely.

(3) In February 2009, this Court issued a decision in the case of *Allen v. State*.<sup>5</sup> In that decision, which reconciled prior case law, we held that when the State proceeds on a theory of accomplice liability for criminal offenses that are divided into degrees, the jury is required to make an individualized determination regarding *both* a defendant's mental state *and* his culpability for any aggravating fact or circumstance.<sup>6</sup> When Travis filed his third motion for postconviction relief in August 2009, he raised four claims, including a claim that this Court's holding in *Allen v. State* mandated reversal of the Superior Court's judgment of conviction in his case. The

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<sup>2</sup> *Travis v. State*, 1993 WL 541923 (Del. Dec. 22, 1993).

<sup>3</sup> *Travis v. State*, 1998 WL 171091 (Del. Mar. 23, 1998).

<sup>4</sup> *Travis v. State*, 2008 WL 308485 (Del. Super. Feb. 4, 2008).

<sup>5</sup> 970 A.2d 203 (Del. 2009).

<sup>6</sup> *Id.* at 213.

Superior Court denied Travis' third motion for postconviction relief. This appeal followed.

(4) Travis raises four issues in his opening brief on appeal. First, he contends that the Superior Court erred in failing to reverse his conviction based on the holding in *Allen v. State*. Second, Travis asserts that the Superior Court erred in failing to sever his trial from that of Anderson's. Third, Travis argues that the prosecutor engaged in misconduct at his trial by repeatedly using the word "victim." Finally, Travis argues that the Superior Court erred in failing to sequester the jury.

(5) Before addressing the substantive merits of any postconviction claim on appeal, this Court must first consider the procedural requirements of Superior Court Criminal Rule 61.<sup>7</sup> Rule 61(i)(1) provides that a motion for postconviction relief may not be filed more than three years after the judgment of conviction is final.<sup>8</sup> Also, Rule 61(i)(2) prohibits the filing of repetitive motions for postconviction relief.

(6) With the exception of his claim under *Allen v. State*, the Superior Court held that Travis' other three grounds for postconviction relief were procedurally barred because they were both untimely and repetitive.

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<sup>7</sup>*Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>8</sup> This rule subsequently was amended to reduce the limitations period to one year for convictions that became final after July 1, 2005.

Moreover, Travis had failed to establish either a miscarriage of justice<sup>9</sup> or that consideration of his claims was warranted in the interests of justice.<sup>10</sup> We find this holding entirely correct and affirm this portion of the judgment below on the basis of the Superior Court's well-reasoned decision dated December 7, 2009.

(7) Travis' remaining claim is that the decision in *Allen v. State* mandates reversal of his convictions because the trial court failed to properly instruct the jury pursuant to 11 Del. C. § 274.<sup>11</sup> The Superior Court held that there was no procedural bar to consideration of this claim because it asserts a retroactively applicable right that became newly recognized after Travis' judgment of conviction became final. Nonetheless, the Superior Court found no merit to Travis' claim because it concluded that the jury had been properly instructed.

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<sup>9</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (providing, among other things, that the procedural bars of Rule 61(i)(1) and Rule 61(i)(2) do not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the conviction).

<sup>10</sup> *Id.* 61(i)(2).

<sup>11</sup> 11 Del. C. § 274 provides that, when two or more people are criminally liable for an offense that is divided into degrees, "each person is guilty of an offense of such degree as is compatible with that person's own culpable mental state and with that person's own accountability for an aggravating fact or circumstance."

(8) In the case of *Richardson v. State*,<sup>12</sup> this Court recently held that the decision in *Allen v. State* was not retroactively applicable because it did not constitute a new rule and is not implicit in the concept of ordered liberty.<sup>13</sup> Consequently, because *Allen v. State* is not retroactively applicable, Travis' postconviction claim based on the holding in that case is procedurally barred as both untimely and repetitive. Accordingly, while we reject the Superior Court's conclusion that *Allen v. State* applies retroactively, we nonetheless affirm the Superior Court's judgment denying Travis' postconviction claim on the independent and alternative ground that this claim is procedurally barred and Travis failed to overcome the procedural hurdles.<sup>14</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>12</sup> *Richardson v. State*, \_\_\_ A.2d \_\_\_, 2010 WL 2722690 (Del. July 12, 2010).

<sup>13</sup> *Id.* at \*4.

<sup>14</sup> *Unitrin, Inc. v. American Gen'l Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (noting that the Delaware Supreme Court may affirm a judgment on the basis of a different rationale than that articulated by the trial court).